

JUDGE PRESKA

'08 CIV 6614

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CORBIS CORPORATION,
a Nevada corporation,

Plaintiff,

v.

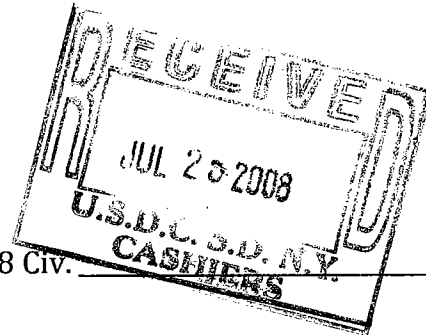
MERCOLA.COM, LLC,
a Nevada limited
liability company,

Defendant.
-----X

No. 08 Civ. _____

ECF CASE

Jury Trial Demanded



COMPLAINT

Plaintiff Corbis Corporation, through its attorneys, complaining of Defendant Mercola.com, LLC, alleges as follows:

1. This is a civil action seeking damages for copyright infringement and violations of the Digital Millennium Copyright Act ("DMCA"). As explained below, Defendant has made widespread and repeated use without permission of images owned or controlled by Plaintiff, contrary to the copyright laws.

JURISDICTION AND VENUE

2. Jurisdiction. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C., Sections 1331 and 1338(a), as this action involves claims brought under federal law, the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.* This Court has personal jurisdiction over Defendant because, on information and belief, the Defendant transacts business in this State and because Defendant's (or its agents') access to and use

of Plaintiff's website constitutes agreement to the jurisdiction of this Court under the applicable terms and conditions.

3. Venue. Venue in this Court is proper pursuant to 28 U.S.C. Sections 1391(b) and 1400(a) because, on information and belief, the Defendant may be found in this District and because Defendant's access to and use of Plaintiff's website constitutes agreement to venue in this Court under the applicable terms and conditions.

THE PARTIES

4. Plaintiff Corbis Corporation ("Corbis") is a Nevada corporation, with its principal place of business at 902 Broadway, New York, New York 10010.

5. Upon information and belief, Defendant Mercola.com, LLC ("Mercola") is a limited liability company organized under the laws of the State of Nevada, with its principal places of business at 1143 West Schaumburg Road, Schaumburg, Illinois 60194.

BACKGROUND

6. Corbis is in the business of licensing photographs and fine art images on behalf of itself and the photographers and other licensors it represents. Generally, the images in Corbis' collection were taken by professional photographers who earn most or all of their livelihoods from the licensing fees Corbis is able to obtain for their images. Many of the images in Corbis' collection are produced by well-known photographers, and the collection includes some of the most recognized images in contemporary society.

7. The images in Corbis' collection are the subject of copyright protection under the laws of the United States, and at considerable expense and effort, Corbis has protected images in its collection by systematically registering the copyrights to the images.

8. Corbis owns and operates a website located at the Internet address www.corbis.com. At Corbis' website, professional and consumer users are able to search hundreds of thousands of images from Corbis' collection and then pay to license the images for specific personal or commercial uses. Use of the www.corbis.com site and the images available for license there is governed by terms and conditions that require all disputes to be subject to the jurisdiction of state and federal courts in New York, New York.

9. At all times relevant hereto, Mercola owned and operated a website located at the Internet address www.mercola.com. Upon information and belief, Mercola is a company based in Illinois that operates a website that claims to be the "World's Most Popular Natural Health Newsletter."

10. Upon information and belief, on an as yet unknown date, Mercola or its agent visited Corbis' website, and without authorization, downloaded or copied numerous Corbis images that had previously been registered with the United States Copyright Office. Then Mercola or its agent uploaded these same images to its www.mercola.com website for display on its website, as part of the marketing and advertising material presented on that site in order to attract business to Mercola. On information and belief, these same images were included on the www.mercola.com website until at least June 2008, after repeated notice by Corbis to Mercola.

11. Attached hereto as Exhibit A are true and correct copies of each of the Corbis images previously registered with the Copyright Office, with screen shots taken from the www.mercola.com website depicting these images from Corbis' collection that were used by Mercola without authorization and displayed on its website.

12. At all relevant times hereto, Mercola displayed these copyrighted images on its website without license or other authorization from Corbis.

13. Attached hereto as Exhibit B is a chart identifying the United States Copyright Office registration certificate numbers and registration dates for the Corbis images displayed on Exhibit A, evidencing that Corbis owns or controls the registered copyrights to the images that were displayed on the www.mercola.com website.

FIRST CAUSE OF ACTION
COPYRIGHT INFRINGEMENT

14. Corbis repeats and realleges the allegations of Paragraphs 1 through 13 as if fully set forth herein.

15. Corbis holds valid and exclusive registered copyrights to the images that are the subject of this action and that are evidenced by the copyright registration certificates referenced by Exhibit B.

16. Mercola reproduced, distributed and displayed those images without Corbis' authorization.

17. The actions and conduct by Mercola as described above infringe upon the exclusive rights of Corbis granted by Section 106 of the Copyright Act, 17 U.S.C. § 106, to display, reproduce, and distribute the registered copyrighted works to the public.

18. Such actions and conduct by Mercola constitute copyright infringement under Section 501 of the Copyright Act, 17 U.S.C. § 501.

19. As a result of the copyright infringement described above, Corbis is entitled to relief including, but not limited to, injunctive relief, actual or statutory damages, statutory costs and attorneys' fees, and prejudgment interest.

SECOND CAUSE OF ACTION
DMCA VIOLATION

20. Corbis repeats and realleges the allegations of Paragraphs 1 through 19 as if fully set forth herein.

21. All of the images that are the subject of this lawsuit were displayed on the www.corbis.com website with corresponding copyright management information ("CMI"). Upon information and belief, when Mercola or its agents duplicated and displayed the subject images on its www.mercola.com website, it removed the CMI from each of the Corbis images used by Mercola. The removal of the CMI from each of these images in order to induce, enable, facilitate, or conceal Mercola's infringement of those images, as described above, constitutes a violation of the Digital Millenium Copyright Act, 17 U.S.C. § 1202(b).

22. As a result of the conduct described above, Plaintiff is entitled to relief including, but not limited to, injunctive relief, actual or statutory damages, statutory costs and attorneys' fees, and prejudgment interest.

JURY TRIAL DEMAND

23. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury.

RELIEF REQUESTED

WHEREFORE, Corbis prays for relief as follows:

1. For an order permanently enjoining Defendant from infringing Corbis' copyrighted images pursuant to Section 502 of the Copyright Act, 17 U.S.C. § 502, and permanently enjoining Defendant from displaying Corbis' copyrighted images pursuant to the DMCA, 17 U.S.C. § 1203(b);

2. For an award of Defendant's profits and for damages in such amount as may be found, or for statutory damages of (a) not less than \$750 or more than \$30,000 per image pursuant to 17 U.S.C. Section 504(c)(1) or, upon a finding of willful infringement pursuant to 17 U.S.C. Section 504(c)(2), up to \$150,000 per image, and (b) not less than \$2,500 or more than \$25,000 per image pursuant to 17 U.S.C. Section 1203(c)(3)(B);

3. For an award of costs, pursuant to 17 U.S.C. Sections 505 and 1203(b)(4);

4. For an award of reasonable attorneys' fees, pursuant to 17 U.S.C. Sections 505 and 1203(b)(5);

5. For an award of prejudgment interest on the amount of any award to Plaintiff; and

6. For such other and further relief as the Court deems just and proper.

Dated: New York, New York
July 25, 2008

COVINGTON & BURLING LLP

By: Matthew J. Watkins
Matthew J. Watkins

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620 Eighth Avenue
New York, New York 10018
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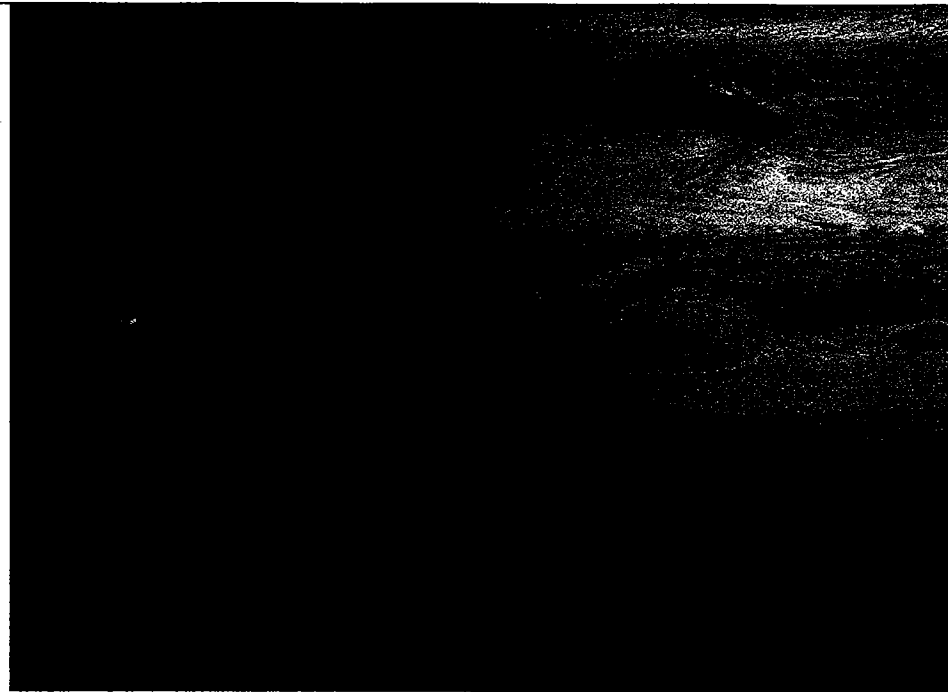
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Exploring the Universe In Pictures

Since so many of you liked yesterday's link to pictures transmitted from the [Hubble Space Telescope](#),

I thought you'd also enjoy looking at another top 10 list of the top-rated images from [NASA's Multimedia gallery](#). And, I agree these images truly are the best of the best too ...



Sources:

- National Aeronautics and Space Administration (NASA)

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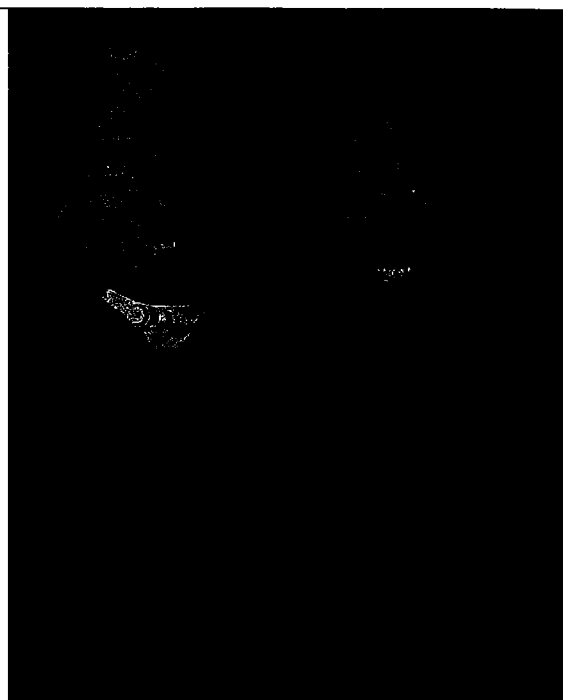
The government has been searching for new guidelines and a fresh look for the Food Guide Pyramid, one that will encourage Americans to follow healthier eating habits. The current Food Guide Pyramid is a familiar one to many people, however two-thirds of the U.S. population continues to remain overweight or obese. In a poll, it was discovered that 30 percent of Americans rated overeating as the number one health problem in the nation. Despite these results only 12 percent stated they were dieting.

Officials recommended creating a new symbol to take the place of the 1992 Food Guide Pyramid. Officials added that the new proposition would be more effective if it included an extended amount of information on how people could to improve and incorporate healthy eating habits into their lives. Newly revised guidelines should be released in the early portion of 2005.

Flaws with Pyramid

Researchers agreed that the "One size fits all" guidelines do not work for everybody. The example they cited for this was the bread, cereal, rice and pasta portion of the pyramid that recommends six to 11 servings a day. Unless someone referred to the guidelines themselves they wouldn't know that six servings

EXHIBIT A



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than most who get the disease, and she has never smoked.

The number of nonsmokers with lung cancer is growing, especially among women. Right now, 10 percent of men with lung cancer have never smoked, but 20 percent of women who have the illness are nonsmokers.

Possible causes may include:

- Greater susceptibility to carcinogens
- Secondhand smoke
- Radon gas
- Genetic predisposition

Lung cancer kills about 15,000 non-smoking women each year, and the disease remains as deadly now as it did 30 years ago. Only about 15 percent of lung cancer patients survive as long as five years.

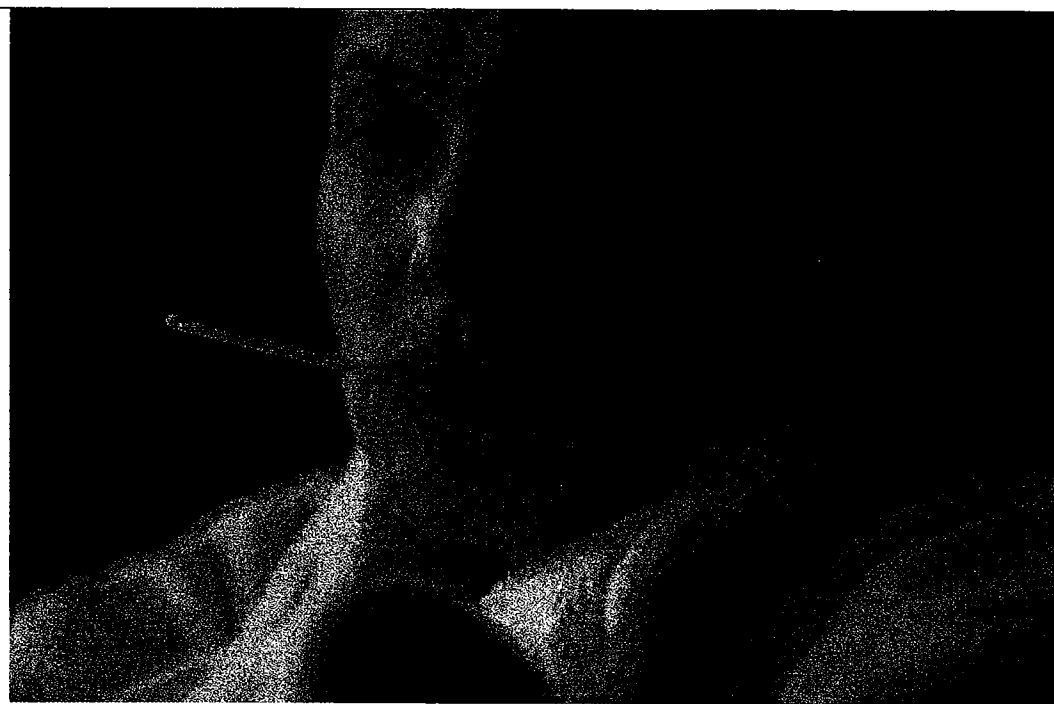
Sources:

» *USA Today* August 9, 2005

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The Real Story Behind The Flu Numbers 11/17/04 - Microsoft Internet Explorer

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The Real Story Behind The Flu Numbers

The cold winter months and rapidly approaching flu season have sent many Americans into the state of panic. Perhaps it has something to do with this overstated statistic: 36,000 die annually from influenza. However, despite these overwhelming numbers, researchers have discovered that the flu is not the lone cause behind these deaths.

So why the flubbed stats? Part of the problem lies in the fact that the flu is not a direct killer, but a fatal contributor to a group of factors leading to one's death.

Another reason for these skewed figures is that the system for obtaining this death toll number is complex, imprecise and anonymous. In fact, in 2002, city health officials estimated there was roughly 2,500 deaths in New York caused by the flu virus. The actual number of deaths caused by the flu was two. Further, according to city health records, not a single death certificate from 2001 listed the flu as the culprit.

"Flawed Findings"

Here's where the numbers come from: The health department and the CDC start by looking at the average number of

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IMAGE URL http://products.mercola.com/Images/most-popular-products/vaccine_teleconference.jpg

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The Danger of Vaccines, and How You Can Legally Avoid Them" is a professionally recorded 90-minute MP3 audio file that you can conveniently listen to on your personal MP3 player, computer, or other MP3 playing source. The audio file features an important and detailed conversation between world-renowned vaccine expert Dr. Sherri Tenpenny and me in the first hour, with select questions from over 600 conference participants in the second half-hour. This audio file will help you:

- ✓ Discover simple, practical steps you can take to legally avoid dangerous immunizations
- ✓ Learn the difference between philosophical, religious and medical exemptions
- ✓ Understand why most medical exemptions will not stand up in court
- ✓ Learn practical methods of improving your child's immunity so they won't get the diseases the vaccines are supposed to, but frequently don't, prevent

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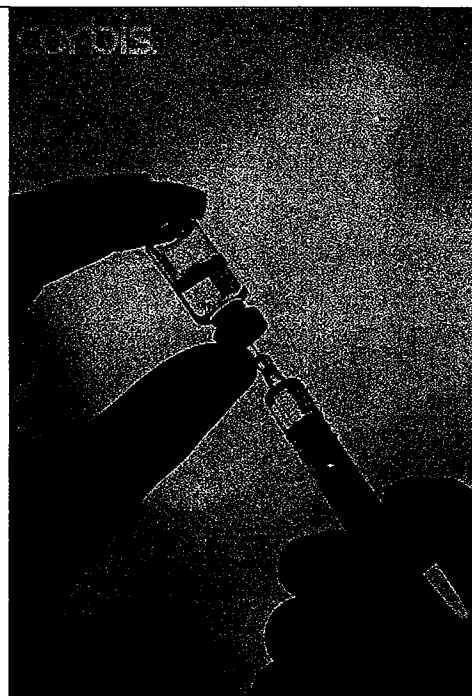
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results in my patients since deciding to use EFT exclusively in June of 2001. **Though future teleclinics on particular applications with EFT will become available, this is the audio recording (and written transcripts) that provides the EFT basics that everyone will need to know!** With this MP3 and .pdf package you will be able to study EFT at your own convenience, and you will be able to review the information at any time! [More Information ...](#)

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"The Danger of Vaccines, and How You Can Legally Avoid Them" is a professionally recorded 90-minute MP3 audio file that you can conveniently listen to on your personal MP3 player, computer, or other MP3 playing source. The audio file features an important and detailed conversation between world-renowned vaccine expert Dr. Sherri Tenpenny and me in the first hour, with select questions from over 600 conference participants in the second half-hour. This audio file will help you:

- ✓ Discover simple, practical steps you can take to legally avoid dangerous immunizations.
- ✓ Learn the difference between philosophical, religious and medical exemptions.
- ✓ Understand why most medical exemptions will not stand up in court.

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Thimerosal Battle Heads to "Vaccine Court"

Many parents of autistic children are emotionally and economically spent, attempting to care for their children who in many cases can't speak, aren't toilet-trained and suffer from severe mood swings. A growing number of families have blamed the condition of their children on thimerosal, a mercury-based preservative used to keep bacteria out of children's vaccines sold in multiple-dose vials.

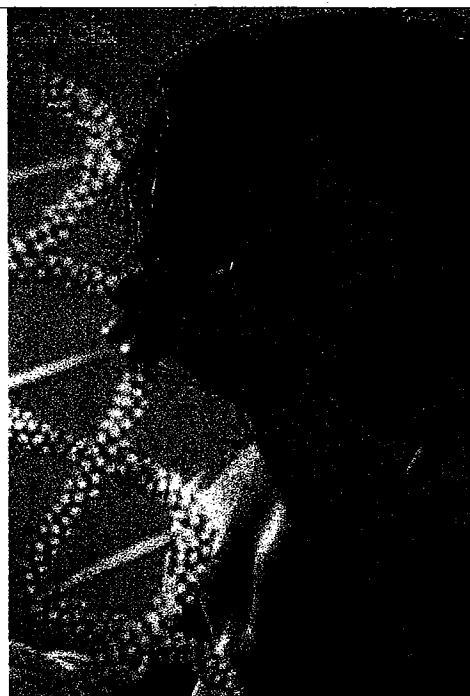
Unfortunately, there were no studies done to determine thimerosal's possible side effects on the developing brains of babies. Also health officials who pushed to expand immunizations in the 90s didn't consider million of kids would be exposed to amounts of mercury that would exceed federal guidelines.

By all accounts, there are more than 4,000 families demanding compensation to pay for the special needs of their children and their claims have overwhelmed a sector of the U.S. Court of Federal Claims, referred to as the "vaccine court."

Health officials and vaccine producers dispute these claims, saying there's no proof the minute exposure to thimerosal (1 part mercury per 10,000 parts of vaccine) causes brain damage. In fact, one CDC official believes only "junk scientists and charlatans" support the link between autism and thimerosal. However, parents cite their own studies that prove the opposite.

Not only are vast amounts of money at stake, but the reputations of vaccine producers and two federal agencies—FDA and CDC—could be tarnished if not ruined in the process, if the court rules in favor of

EXHIBIT A



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How Many Genes Do You Have? 6/21/03 - Microsoft Internet Explorer

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How Many Genes Do You Have?

The current reckoning in a genetic database called Ensembl estimates that humans have 24,847 genes.

However, it is still uncertain whether that estimate is accurate, according to researchers.

Genes are regions of DNA that code for proteins. Recognizing genes has proved to be more complicated than expected. One reason why recognizing genes is so challenging is because predictor programs, which trawl through DNA for landmark sequences characteristic of a gene, are known to be unreliable.

Back-up evidence can also be misleading. For instance, a putative human gene is considered more likely to be real if it matches one in gene databases from mouse, fruit fly or other organisms. However, an unknown number of human genes have no obvious match.

The estimated number of human genes will likely rise again to over 30,000, according to researchers.

Nature June 3, 2003

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CASE NUMBER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CORBIS CORPORATION,
a Nevada corporation,

Plaintiff,

-against-

MERCOLA.COM, LLC,
a Nevada limited
liability company,

Defendant.

COMPLAINT

COVINGTON & BURLING LLP

620 EIGHTH AVENUE
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TEL 212.841.1000

ATTORNEYS FOR

CORBIS CORPORATION
